

State of New Jersey  
Department of Environmental Protection  
Division of Enforcement, Technical and Financial Support  
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**IN THE MATTER OF THE  
TIFA PROPERTY  
50 DIVISION AVENUE  
LONG HILL TOWNSHIP, MORRIS COUNTY  
BLOCK 12301, LOT 1 &  
BLOCK 10100, LOT 7.01  
PROGRAM INTEREST NO. 024069**

**ADMINISTRATIVE CONSENT  
ORDER**

**AND**

**PRISM MILLINGTON, LLC**

This Administrative Consent Order ("Order") is issued pursuant to the authority vested in the Department of Environmental Protection ("Department" or "DEP") by N.J.S.A. 13:1D-1 to -19, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.11z ("Spill Act"), and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRRA"), and duly delegated to the Assistant Director of the Enforcement and Information Support Element within the Site Remediation and Waste Management Program of the Department pursuant to N.J.S.A. 13:1B-4.

**FINDINGS**

1. The Tifa Property consists of approximately 12 acres located at 50 Division Avenue, in the Millington section of Long Hill Township, Morris County, and is also known and designated as Block 12301, Lot 1 (formerly Block 119, Lots 1 and 7.01) and Block 10100, Lot 7.01 (formerly Block 116, Lot 4; Block 118, Lots 2, 3, 4, 5; and Block 119, Lots 2, and 3) on the Tax Map of Long Hill Township, Morris County (hereinafter "Property").

2. A portion of the Property, approximately five acres in size, consists of an asbestos and asbestos-containing materials landfill, surrounded by a fence ("Restricted Area" or "Asbestos Landfill"). The Property is also part of the United States Environmental Protection Agency's ("EPA's") Asbestos Dump Superfund Site. The EPA conducted a remediation pursuant to a 1988 Record of Decision, with which the Department concurred.

3. The remaining portions of the Property, approximately seven acres in size, consist of a multi-tenant business/industrial park with four 1 to 2-story buildings and an asphalt parking area ("Redevelopment Area").

4. The Property is subject to the 30- year Operation and Maintenance Plan ("O&M") for Operable Unit 1, Asbestos Dump Superfund Site, Millington, New Jersey, prepared for the EPA and the Department by IT Corporation in September 2001. On August 29, 2008, a Deed Notice ("Deed Notice") was filed for the Site with the Clerk of Morris County, setting forth, among other things, narrative descriptions of the institutional and engineering controls in place at the Site.

5. Tifa Realty, Inc. is a corporation organized in the State of New Jersey and is the successor to Tifa, Ltd. (collectively "Tifa").

6. Prism Millington, LLC ("Prism") is a corporation organized in the State of New Jersey with a business address of 200 Broadacres Drive, Suite 180, Bloomfield, New Jersey 07003.

7. Tifa has owned the Property from 1976 until the present.

8. In December 2003, the Department entered into a Settlement Agreement with Tifa that requires, among other things, that Tifa shall not sell or otherwise alienate the Property, or any portion thereof, nor subdivide or otherwise reduce the size of the Property, or any portion thereof, without approval from the Department.

9. On June 18, 2013, Prism entered into an Option and Sale Agreement with Tifa to purchase the Property. Prism seeks the Department's approval to acquire the Property.

10. Under the cover of a letter dated November 3, 2015, Prism submitted a Preliminary Assessment /Site Investigation Report ("PA/SI") to the Department, prepared by its consultant, EWMA. The PA/SI identified eight areas of concern ("AOCs") in the Redevelopment Area that require further investigation to be conducted under the oversight of a Licensed Site Remediation Professional ("LSRP").

#### Definitions

11. Unless otherwise expressly provided, terms used in this Order that are defined in the Spill Act or SRRA, or in the regulations promulgated under those acts, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Order, the following definitions shall apply:

"Contaminated Site" shall mean the Property and all other areas where any hazardous substance discharged there has become located, which the Department has designated as Site Remediation Program Interest No. 024069.

### **NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:**

#### Remediation Requirements

12. Prism shall remediate the discharges at the Contaminated Site according to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-2.3 including, but not limited to, retaining an LSRP within 45 days of acquiring the Property. Notwithstanding the foregoing, Prism shall not be required to remediate contamination migrating from the Asbestos Landfill except as set forth in paragraphs 22 and 30 below.

13. Within 60 days of acquiring title to the Property, Prism shall apply for a Remedial Action Permit ("RAP") for the engineering and institutional controls for the Asbestos Landfill, using DEP forms and DEP procedures specified at N.J.A.C. 7:26C, and shall establish and maintain financial assurance in accordance with N.J.A.C. 7:26C-7.10. The financial assurance shall not include any cost for the failure of the cap on the Asbestos Landfill ("Asbestos Landfill Remedy").

14. Prism shall remediate the Contaminated Site in accordance with the timeframes specified in N.J.A.C. 7:26C et. seq. and N.J.A.C. 7:26E et. seq. and obtain an entire site Response Action Outcome ("RAO") for the Contaminated Site, including the Redevelopment Area and the Asbestos Landfill. November 2, 2015 is deemed the date from which such timeframes will be initiated.

15. Prior to obtaining the entire site RAO for the Contaminated Site (or two RAOs as specified in paragraph 16 below), if any portions of the Contaminated Site, other than the Asbestos Landfill, require engineering and/or institutional controls, Prism shall apply for a Modified Remedial Action Permit ("Modified RAP") pursuant to N.J.A.C. 7:26C-7 and comply with all its terms and conditions. The Modified RAP shall include, but not be limited to, the engineering and institutional controls for the Asbestos Landfill and any other portions of the Contaminated Site requiring a RAP. Prism may establish separate Remedial Action Permits for the Asbestos Landfill and for the Redevelopment Area. Prism shall establish and maintain financial assurance in accordance with N.J.A.C. 7:26C-7.10, except that financial assurance is not required for the failure of the Asbestos Landfill Remedy as noted in paragraph 13 above.

16. Prism may obtain separate Response Action Outcomes for the Asbestos Landfill and for the Redevelopment Area. By operation of law, a Covenant Not to Sue pursuant to N.J.S.A. 58:10B -13.2 will be afforded to Prism upon and the issuance of an entire site RAO for the Contaminated Site, or portions thereof should Prism obtain separate RAOs in accordance with this paragraph. Until the RAO issues for the Asbestos Landfill, DEP covenants not to sue or take administrative action against Prism for the Asbestos Landfill except as may be specified in paragraphs 19 to 27 below.

17. DEP covenants not to sue or take administrative action against Prism for reimbursement of past cleanup and removal costs for the Property. DEP fully and forever releases, covenants not to sue and agrees not to otherwise take administrative action against Prism for any causes of action for natural resource damages relating to the Property.

18. Prism, after it acquires title to the Property and becomes owner ("Property Owner"), shall allow the Department and/or the EPA access to the Property upon reasonable prior notice and in accordance with all laws, rules regulations and ordinances. The State, for itself, its successors and assigns, agrees to indemnify the Property Owner, its heirs, successors and assigns, from any and all liability, claims, damages and actions that may result from the negligent use or occupancy of the Property by the State, subject to the following exceptions: 1) The State shall have no obligation to indemnify or hold harmless the Property Owner, its heirs, successors or assigns, or any of them, for any claims or damages for which the State would have no liability under the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 through -12-3) and the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 through -14-4); 2) the liability, if any, of the State shall be subject to the availability of the State of New Jersey's funds; and 3) the agreement of the State to indemnify, as set forth in this paragraph,

shall not apply to any claims, actions or damages that may arise out of, be occasioned by or result from any condition existing on, or which did exist on, the Property at the time of the execution of this Order, or at any time prior to the execution of this Order.

#### Operation & Maintenance of the Asbestos Landfill Remedy

19. In addition to complying with the terms and conditions of the RAP(s), Prism shall be responsible for O&M Tasks related to the Asbestos Landfill (as set forth in Exhibit C of the Deed Notice, a copy of which is attached to this Order as Appendix 1), up to the maximum amount of \$17,500 per year. The O&M Tasks will include conducting two sampling events in the five-year period instead of the one sampling event required in Exhibit C of the Deed Notice. Prism's responsibility for O&M Tasks excludes a failure of the Asbestos Landfill Remedy meaning that Prism is not responsible for such a failure except as may be specified in paragraphs 22 and 30 below.

20. The LSRP of Record for the Property shall certify as to the annual costs of the O&M Tasks and any balance to be designated as the O&M Tasks Gap Funds, described below, in the biennial certification submitted for the Property pursuant to N.J.A.C. 7:26C-7.7.

21. Subject to the annual O&M Tasks cap of \$17,500 per year plus any funds that may be available in the O&M Tasks Gap Funds, Prism shall promptly complete any needed repairs that could adversely impact the structural integrity of the Asbestos Landfill Remedy. Needed repairs include repairs to address deficiencies identified through routine O&M activities, as well as any repairs requested by the Department or the EPA that are similar to the repairs identified as O&M (excluding failure of the Asbestos Landfill Remedy). Should Prism receive written notice of such requested repairs from the Department, Prism shall have no less than thirty (30) days from that notice to commence the repairs, which repairs shall be completed promptly.

22. Should Prism fail to promptly complete any needed repairs which have an adverse impact on the structural integrity of the Asbestos Landfill Remedy as noted in paragraph 21 above, then Prism shall become fully responsible for the structural integrity of the remedy.

#### Asbestos Landfill Remedy Failure Fund

23. Prism shall pay the Department a total of \$300,000, which DEP shall deposit into a remedy failure fund for the Asbestos Landfill ("Remedy Failure Fund"). The amount of \$300,000 shall be paid in accordance with the following schedule:

<u>Payment #</u>	<u>Amount Due</u>	<u>Payment Due Date</u>
1	\$50,000	30 days after closing on the Property. This date shall become the annual "Due Date" for each succeeding year.
2	\$25,000	Due Date, 2018
3	\$25,000	Due Date, 2019
4 – 13	\$20,000	Due Date of each year beginning in 2020 through 2029.

24. In the event that Prism should sell the Asbestos Landfill, any remaining payments shall become due within 60 days of closing of the sale. Subsequent to taking title, Prism intends to set up an affiliated limited liability company to become record owner of the Asbestos Landfill and a second affiliated limited liability company to become record owner of the Redevelopment Area. The foregoing requirement that remaining payments shall be due within 60 days of the closing of sale shall not apply to Prism's transfer of title to one or both of those limited liability companies. Prism acknowledges that any such limited liability company created by Prism for the purposes of taking title of the Asbestos Landfill or the Redevelopment Area will be bound by the terms of this Order. Any future sale of the property, subsequent to Prism's initial transfers of the Asbestos Landfill and the Redevelopment Area to those limited liability companies, will trigger the requirements of this paragraph.

#### O&M Tasks Gap Funds

25. Prism agrees that it shall designate \$17,500 annually, in perpetuity, subject to paragraph 27 below, towards O&M Tasks related to the Asbestos Landfill. In the event that O&M Tasks do not reach \$17,500 in any given year, the difference between the annual cost of O&M Tasks and \$17,500 shall be designated by Prism as additional funds ("O&M Tasks Gap Funds"), to be made available to Prism for any O&M activities in succeeding years related to the Asbestos Landfill that may exceed \$17,500 annually.

26. In the event of a failure of the Asbestos Landfill Remedy requiring repairs beyond those specified in Appendix 1, Prism shall first pay to the Department the amount of remaining O&M Tasks Gap Funds that have accrued to date and accounting for use of such funds consistent with paragraph 25, up to and including the amount necessary to address such failure but not in excess of the total available O&M Tasks Gap Funds, prior to the Department's use of the funds that have accrued in the Remedy Failure Fund.

27. Prism shall maintain the O&M Tasks Gap Funds in an interest-bearing account with an FDIC-insured financial institution, for the benefit of the Department. Any interest generated shall continue to accrue to the balance of the O&M Tasks Gap Funds. Payments from the O&M Tasks Gap Fund shall be made: 1) as the LSRP of Record for the Property shall direct in writing consistent with this Order; 2) as the Department shall direct pursuant to paragraph(s) 21 and/or 26; or 3) as the Department shall direct in writing if Prism or any New Owner shall be unable to perform O&M Tasks. Payment from the O&M Tasks Gap Funds shall be made only as specified in this Order and no person shall have access to the O&M Tasks Gap Funds except as provided in this Order. Prism's only obligation to contribute to the Funds is the designation of additional funds pursuant to paragraph 25 above and the accrual of the aforementioned interest, each in perpetuity, subject to paragraph 28 below.

28. Prism agrees to include language in a deed notice/covenant, subject to Department written approval, reflecting that the performance of the O&M Tasks and the financial obligations of the \$17,500 annual payment, interest payments, and the O&M Tasks Gap Funds attach to the owner of the Redevelopment Area and run with the land.

### Redevelopment of the Asbestos Landfill

29. Prism shall not develop any portion of the Asbestos Landfill without prior approval of the Department. For the purposes of this Order, "develop" shall not include replacement of the fencing or the use of the Asbestos Landfill for passive recreational use, provided such activities are consistent with all applicable EPA and DEP requirements for such use of the Asbestos Landfill.

30. Should Prism develop any portion of the Asbestos Landfill or otherwise compromise the Asbestos Landfill Remedy, Prism shall assume full responsibility for all repairs of the Asbestos Landfill Remedy without limitation.

### Sale or Subdivision of the Property

31.

A. Should Prism sell or subdivide any portion of the Property, Prism shall ensure that the Purchaser or subdivision recipient (collectively, "New Owner") of the Property assumes all of Prism's obligations for that portion of the Property being sold or subdivided under law and as set forth in this Order, including, without limitation, the assumption of the performance of O&M Tasks, the establishment and Department's use of the Remedy Failure Fund, and the dedication of funds annually as O&M Tasks Gap Funds, as described in this Order. If the sale or subdivision involves a portion of the Property included in the RAP, Prism shall comply with N.J.A.C. 7:26C-7.11.

B. Prism shall provide notice to the Department of any sale, transfer or subdivision of the Property. Prism shall provide proof that its obligations under this Order have been accepted by the New Owner of the Property. No sale or subdivision shall occur unless Prism provides written notice to the Department, in the form of a written assumption or similar agreement with the New Owner, no less than thirty (30) days prior to said sale or subdivision.

32. Prism agrees that if the Property is subdivided, the owner of the Redevelopment Area shall remain a permittee for the Asbestos Landfill RAP pursuant to N.J.A.C. 7:26C-7 and consistent with the terms of the deed notice / covenant set forth in paragraph 28. In the event of any conflict between the terms of paragraph 28 of this Order and N.J.A.C. 7:26C-7, Prism shall comply with the regulation.

### General Provisions

33. For the avoidance of doubt, nothing in this Order changes the protections, if any, provided by N.J.S.A. 58:10-23.11g4 through 23.11g8, more commonly known as the "Lender Liability Act".

34. Nothing in this Order shall be construed as an admission by the Prism or finding by the Department of any wrongdoing or liability on the part of Prism for the discharge of hazardous substances at or from the Property.

35. The Department reserves and this Order is without prejudice to, all rights against Prism concerning all other matters.

36. Nothing in this Order shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the environmental laws of the State of New Jersey.

37. Nothing in this Order shall restrict the ability of the Department to raise or make the above findings in any other proceeding to the extent not inconsistent with this Order.

38. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order.

39. Prism agrees not to contest (a) the authority or jurisdiction of the Department to enter into this Order, and (b) the terms or conditions hereof, except that Prism does not waive its right to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this Order.

40. This Order shall be binding on Prism and any successors, subsidiaries, assigns, trustees in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Prism.

41. Each undersigned representative of Prism and the Department certifies that he or she is authorized to enter into this Order, and to execute and legally bind each party to this Order.

42. This Order may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Order.

43. No modification or waiver of the Order shall be effective except upon written amendment of the Order duly executed by all the parties.

44. This Order shall be governed by and interpreted under the laws of the State of New Jersey.

45. The Effective Date of this Order shall be the date that both Prism and the Department have executed this Order.

46. If Prism does not take title to the Property, then this Order is null and void.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Date: AUG 28 2017

By: Kevin F. Kratina  
Kevin F. Kratina, Assistant Director  
Enforcement and Information Support Element

PRISM MILLINGTON, LLC

Date: 8-24-2017

By: Eugene Robert Diaz  
Name: Eugene Robert Diaz  
Title: MANAGER / member



# **Appendix 1**

Exhibit C of the August 29, 2008 Deed Notice

## **EXHIBIT C NARRATIVE DESCRIPTIONS OF THE INSTITUTIONAL AND ENGINEERING CONTROLS**

### **(A) General Description of this Deed Notice**

This Deed Notice has been prepared in accordance with EPA Guidance and the New Jersey Department of Environmental Protection's the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The Property located on **Block 12301, Lot 1** (formerly Block 119, Lots 1 and 7.01) in the Township of Long Hill, County of Morris, State of New Jersey, further described in Exhibit A herein. This Deed Notice is for a portion of the Property, as set forth below.

#### **(1) Site of the Restricted Area.**

The entire Property is approximately 11 acres, with the Restricted Area comprising approximately 5 acres. These five areas are the surface area of the landfill, which is surrounded by a fence. The landfill contains approximately 90,000 cubic yards of asbestos and asbestos-containing materials such as broken asbestos tiles and asbestos fiber material that have been capped in place. The major components of the landfill construction include drainage channels, a retaining wall and a wetland channel. After construction of the engineering controls was completed, the landfill area was covered with two feet of soil and seeded.

#### **(2) Description of the Restrictions on the Property by Operation of this Deed Notice.**

The type of restrictions for this Property significantly limit any type of intrusion onto the landfill cap, which constitutes the Restricted Area. Any use of the landfill area [Restricted Area] must be designed to protect the integrity of the components of the landfill.

#### **(3) The objective of the restrictions.**

The objective of the restrictions is to provide notice of the existence of the landfill and the engineering controls that were constructed to protect human health and the environment.

### **(B) Description of the Operations and Maintenance**

The "30 Year Operation and Maintenance Plan For Operable Unit 1 Asbestos Dump Superfund Site Millington, New Jersey" (O&M Plan) September 2001 is the guiding document for operation and maintenance activities for the Restricted Area of the Property. The O&M Plan includes maintenance of the permanent features such as the perimeter fence, retaining wall, surface water runoff controls, access roads and path, and the soil cover cap.

The operation and maintenance activities for this site include the maintenance of the design components as follows:

- Mowing of the grassed portion of the final cover and pruning of any other vegetation;
- Monitoring of surface water and sediment sampling of the Passaic River;
- Groundwater monitoring in accordance with New Jersey landfill closure requirements;

- Periodic visits to the capped area to inspect the integrity of the cover materials;
- Periodic visits to inspect the retaining wall, perimeter fence, and facility access; and,
- Periodic visits to inspect the surface water runoff controls.

The O&M Plan for the site will be implemented through periodic inspection; collection of groundwater, surface water and sediment samples; and, analysis of the environmental data in order to monitor the condition and effectiveness of all portions of the remedy conducted at the site. The schedule for these inspections and environmental monitoring activities has been provided as Table 3-1 in the O&M Plan, which after several years of monitoring by EPA and DEP has been determined to be the frequency stated below in this exhibit. If any problems are observed during these inspections, the property owner will make the necessary repairs. The environmental monitoring is presented below and includes a brief description of the activities to be conducted for the monitoring of surface water, groundwater, and sediment, including the preparation of reports on monitoring and maintenance findings. More detail is provided in the above-described O&M Plan.

As part of the O&M activities, EPA Region II is required to conduct five-year reviews of the site to determine the effectiveness of the program. The monitoring and maintenance activities of the O&M Plan are directed towards these five-year requirements. The property owner will provide maintenance and monitoring information to the DEP in the form of biennial reports.

Inspections will be carried out on a biannual basis. Sampling of groundwater, surface water, and sediment will be carried out once every five years to coincide with EPA's five-year reviews. Sampling frequency may be modified based upon sampling results, once sampling results demonstrate that the levels of the contaminants of concern are below the site limits identified in the O&M Plan.

#### **(1) Inspections**

Inspections of the facility access control, retaining wall, surface water runoff controls, soil cover cap, and monitoring wells shall be performed as described in the following sections.

##### **A. Inspection of the Facility Access Control**

The chain link fence and gate shall be inspected for items such as signs of vandalism, holes or breaks, damage from fallen trees, posted signs that are missing and cracked concrete footings. The gates shall also be checked for ease of opening, and that the locking mechanisms are intact and in working order. The perimeter fences shall be inspected to ensure that it is in and upright and stable position. The access roads will be maintained and kept clear to ensure access for routine inspection and monitoring activities.

##### **B. Inspection of the Retaining Wall**

The retaining wall will be inspected for any structural damage, which may occur to the concrete panels, steel columns or the drains of the retaining wall, and for any acts of vandalism.

In addition, the access path along the riverbank will be inspected. The coating on the steel piles shall be inspected to ensure it remains intact to prevent oxidation damage. The pre-cast concrete panels shall be inspected for items such as graffiti, deep gouges or cracking of the concrete panels, and overall integrity and stability. If necessary, repairs will be performed in a manner and with materials as close as possible to those used during the initial construction of the component under repair. Repairs will be carried out as soon as practical following discovery of the damage.

#### C. Inspection of Surface Water Runoff Controls

The inspections shall include observation of the condition of the grass-lined, rip-rap, and grouted rip-rap channels and the standpipes, outfall pipes, and discharge pipe sections. All surface water runoff controls will be inspected for blockages caused by debris, leaves, grass clippings, silt deposits or excessive vegetative growth which could impede or change the course of flow and cause erosion.

#### D. Inspection of the Soil Cap

The soil cover shall be inspected for the following items:

- Location and condition of any areas of the cap have been eroded (e.g. slope, toe), with particular attention to cap edges.
- Rutting caused by moving activities.
- Location of any subsidence cracks.
- Location and condition of areas where significant (greater than two inches) ponding has occurred.
- Condition of the vegetative cover, including average heights, and location of any unvegetated areas, to assure that it is sufficient to prevent erosion.
- Presence of any deep-rooted plants whose roots may damage the cover material.
- Evidence of trespassing or unauthorized types of use of the capped area.
- Location of any animal intrusion within the capped area or any immediately adjacent areas of the property.
- Wildlife trails.
- Conduct an evaluation survey of the cap and comparison to previous data to check for subsidence or uplift.
- Condition of any corrective actions taken in response to previous inspection reports

A sample of inspection report may be found in Appendix D of the O&M Plan.

#### E. Inspection of Monitoring Wells

The seven monitoring wells on-site shall be inspected for items such as damaged casings, broken/missing caps or locks, damaged bollards, and cracked or broken concrete aprons. If any monitoring well is damaged or otherwise rendered inadequate for their intended use, said well shall be replaced or repaired within 30 days of the date of the inspection or as otherwise directed by the EPA and/or NJDEP. Any monitor well replacement or repairs shall be performed by a New Jersey-licensed well driller as per N.J.A.C. 7:9D.

### **(2) Environmental Monitoring**

Surface water, groundwater, and sediment monitoring shall be performed once every five years to coincide with EPA's five-year review. Subsequent sampling will be conducted based on a frequency determined by the sample results and revised by EPA and/or DEP accordingly. Environmental monitoring includes the collection and analysis of surface water, groundwater and sediment samples from the site and Passaic River in accordance with the Field Sampling Plan and Quality Assurance Project Plan found in Appendix F of the O&M Plan.

- **Surface Water Monitoring**

Surface water monitoring consists of obtaining surface water quality samples from the upstream and downstream locations shown on Figure 1-2 of the Sampling and Analysis Plan.

- **Groundwater Monitoring**

The groundwater-monitoring program consists of obtaining samples from the seven (7) groundwater monitoring wells at the locations indicated on Figure 1-1 of the Sampling and Analysis Plan.

- **Sediment Monitoring**

The sediment monitoring consists of obtaining sediment quality samples from the same locations and after surface water collection at each point. Sampling locations are presented on Figure 1-2 of the Sampling and Analysis Plan.

### **(3) Maintenance of the Facility Control**

The property owner will maintain the access road and path such that routine inspection and monitoring activities can be accomplished. Maintenance includes filling any significant ruts or holes, and the removal of any debris. The chain link fence and gate shall be maintained in order to prohibit any unauthorized site access. Maintenance includes the repair of fence sections that become unstable or are damaged by falling trees or flood borne debris, replacement of any missing signs, and the lubrication of the gate locks, as necessary.

#### A. Maintenance of the Retaining Wall

Maintenance will include the touch up of any chips/gouges on the steel H-piles removal of any markings on the H-piles or concrete panels and the monitoring of any significant (greater than 1½ inches deep) damage to the concrete panels or the retaining wall drains.

B. Maintenance of the Surface Water Runoff Controls

The surface water runoff controls consist of grass-lined, rip-rap and grouted rip-rap lined swales, retaining wall drains, and perforated standpipe inlet. Maintenance of these structures will include the removal of accumulated sediment from the swales and drains.

C. Maintenance of the Landfill Grass Cover and the Soil Cover

Final cover maintenance includes maintaining the integrity and effectiveness of the final cover components including maintaining the vegetation on the cap and making repairs to the cover as necessary to correct the effects of settlement, subsidence and erosion. It shall also include mowing the cap cover.

D. Maintenance of Monitoring Wells

The groundwater monitoring wells must be maintained in an operable condition to allow the collection of samples. Maintaining the groundwater monitoring systems entails inspection of each monitoring well for items such as damaged casing, damaged or disturbed caps and/or locks, and cracked or broken concrete aprons.

**(C) Description of Items Included in Biennial Certification**

A monitoring report that describes the specific activities, pursuant to (A) and (B) above, will be submitted to the Department every two years certifying that the institutional and engineering controls are being properly maintained, that the engineering controls continue to operate as designed, and that the engineering controls continue to be protective of public health, safety and the environment. Any such certification shall include the information relied upon to determine that no changes have been made. The report will be submitted in writing and/or electronic format acceptable to the NJDEP. The report will reflect that land use at the site is consistent with the restrictions in this Deed Notice and any new standards, regulations, or laws applicable to this remedial action will be followed.